REMARKS

Support for Claim Amendments

Support for the amendment to Claim 58 to recite that the inhibitory compound binds to said FcγR protein is found in the specification on page 54, lines 8-26.

Support for new Claim 74 is found in the specification on page 21, lines 6-23; and page 54, lines 8-10.

Support for new Claims 76-77 is found on page 63, lines 10-14.

Support for new Claims 78-79 is found on page 63, lines 15-22.

Support for new Claims 80-81 is found on page 64, line 27 to page 65, line 11.

Support for new Claims 82-84 is found on page 65, lines 19-31.

Rejection of Claims 58-64 Under 35 U.S.C. § 102(e), or in the Alternative, Under 35 U.S.C. § 103:

The Examiner has rejected Claims 58-64 under 35 U.S.C. § 102(e), or in the alternative, under 35 U.S.C. § 103, contending that these claims are anticipated by or are unpatentable over U.S. Patent Publication No. 2002/0068703 by Schreiber et al. The Examiner contends that Schreiber et al. teach a method of preventing phagocytosis of immune complexes using the Fc γR, where the inhibitor can include a peptide or a peptidomimetic, such as a fragment of Fc γRIIa, FcγRIIIa, or FcεRI. The Examiner contends that the reference uses a therapeutic composition comprising an inhibitor of Fc γR and thus allegedly reads on the instant claims. The Examiner notes that the process by which the compounds are made does not impart novelty or unobviousness to a protein when the same protein is taught by the prior art.

Applicants traverse the rejection of Claims 58-64 under 35 U.S.C. § 102(e) and § 103. Initially, Applicants note that Claim 58 has been amended to clarify that the compound identified by the recited method binds to the FcγR protein. The compound is further identified in the amended claims as a compound that (1) inhibits binding of FcγR protein to IgG and/or (2) inhibits binding of FcγR protein with a molecule that stimulates cellular signal transduction through an FcγR protein. Applicants submit that Schreiber et al. does not teach or suggest the presently claimed compound or therapeutic composition and particularly, Schreiber et al. does not teach the therapeutic use of any compounds that bind to an FcR protein (Applicants have also reviewed U.S. Patent No.

5,858,981, in which the Schreiber et al. patent must find priority basis in order to be available as prior art). More specifically, Schreiber et al. teaches the following compounds: (1) an inhibitor of a kinase that is endogenous to the cells that activates an FcR present at the membrane of the cell; (2) a molecule that specifically prevents FcR expression at the membrane of the cells; and (3) a soluble FcR that competes with membrane-bound FcR for binding to immune complexes.

In option (1), in one aspect, the inhibitor binds to a kinase and acts on a kinase, and not the FcR protein. Therefore, this compound does not anticipate or render obvious the subject matter of the present claims, regardless of whether the compound is a peptide or peptidomimetic. In another aspect, the inhibitor is a ribozyme that binds to RNA encoding a phosphorylation site on the FcR, thus preventing the expression of portions of the FcR that are necessary for signal transduction. Another aspect includes a ribozyme or antisense that prevents expression of a kinase. Again, these compounds binds to RNA encoding a kinase or a chain of FcR, and not the FcR itself. None of these compounds anticipate the present invention. Moreover, the ability to produce a compound that binds to and inhibits a kinase or the ability to produce a ribozyme or antisense that binds to RNA encoding a kinase or even RNA encoding a chain of an FcR does not require or rely on knowledge regarding the three-dimensional structure of an FcR, and therefore, can not render the present claims obvious.

In option (2), the compound of Schreiber et al. is an antisense construct that binds to RNA encoding the FcR, thus inhibiting the expression of the FcR. The compound binds to nucleic acids and not the FcR protein, and thus does not anticipate the presently claimed invention. Moreover, antisense technology does not make use of or rely on the three-dimensional structure of the FcR and therefore, such technology does not render the present claims obvious.

In option (3), the compound of Schreiber et al. is a soluble FcR. The soluble FcR does binds to Ig, and not FcR protein, and therefore this compound does not anticipate or render obvious the subject matter of the presently amended claims. Moreover, the knowledge of the three-dimensional structure of an FcR is not required or used by Schreiber et al. to produce a soluble FcR and therefore, the teaching of the use of soluble FcR does not render the present claims obvious.

In view of the foregoing discussion, Applicants respectfully request that the Examiner withdraw the rejection of Claims 58-64 under 35 U.S.C. § 102(e) and § 103.

Obviousness-type Double Patenting Rejection:

The Examiner has rejected Claims 58-64 under the judicially created doctrine of obviousness-type double patenting, contending that these claims are obvious in view of Claims 1-23 of U.S. Patent No. 6,355,683 or Claims 1-20 of U.S. Patent No. 6,835,753.

To expedite prosecution of the present claims, enclosed herewith is a terminal disclaimer. The filing of a terminal disclaimer to obviate the provisional obviousness-type double patenting rejection is not in any way an admission of the propriety of the rejection. The courts have held that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits of the rejection." *Quad Environmental Technologies Corp. v. Union Sanitary District*, 946 F.2d 870, 20 USPQ2d 1392 (Fed. Cir. 1991).

In view of the filing of the terminal disclaimer, Applicants respectfully request that the Examiner withdraw the rejection of Claims 58-64 under the judicially created doctrine of obviousness-type double patenting.

Applicants have attempted to respond to the Examiner's concerns as set forth in the November 2 Office Action. Any questions or concerns regarding Applicants' position should be directed to the below-named agent at (303) 863-9700.

Respectfully submitted,

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